



STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION

20 N STREET, SACRAMENTO, CALIFORNIA

(P.O. BOX 942879, SACRAMENTO, CALIFORNIA 94279-0001)

(916) 445-4982

WILLIAM M. BENNETT
First District, Kentfield

CONWAY H. COLLIS
Second District, Los Angeles

ERNEST J. DRONENBURG, JR.
Third District, San Diego

PAUL CARPENTER
Fourth District, Los Angeles

GRAY DAVIS
Controller, Sacramento

CINDY RAMBO
Executive Director

July 1, 1988

TO COUNTY ASSESSORS:

No. 88/49

ESCAPED ASSESSMENTS - PROBATE PROCEEDINGS

We have recently received numerous inquiries concerning escaped assessments processed under the provisions of Section 531.2 of the Revenue and Taxation Code. The typical case occurs when an individual becomes the owner of a property as an heir prior to the lien date but no change-in-ownership statement is filed. At the close of probate the heir sells the property after July 1 of the same year and two deeds are recorded, one showing the heir's ownership of the property and the second showing the transfer from himself to the new buyer.

Since this is the first notice to the assessor that there has been a change of ownership of the property, and since there was a sale of the property after July 1, the escaped assessment on this property is entered on the unsecured roll in the name of the person who would have been the assessee on the lien date, which is the person who inherited the property as of the date of death. This procedure is in accord with Section 531.2 of the Revenue and Taxation Code which reads in part:

"When the property is real property which...subsequent to July 1 of the year in which the property should have been lawfully assessed, for purposes of Article 3 (commencing with Section 501), but prior to the date of that assessment and the showing thereof on the secured roll, with the date of entry specified thereon, has (1) been transferred or conveyed to a bona fide purchaser for value,...the escape assessment pursuant to either of these articles shall not create or impose a lien or charge on that real property, but shall be entered on the unsecured roll in the name of the person who would have been the assessee in the year in which it escaped assessment...."

The result of this situation is that the heir (the assessee on the lien date) is liable for the escaped assessment on the regular roll which he probably would have prorated with the buyer if he was aware of the additional tax liability. This untimely assessment has resulted in numerous letters of complaint to State Legislators and the Board of Equalization.

The problem is not one that is caused by the assessor. The problem arises when a change-in-ownership statement is not timely filed by the executor or administrator of the estate. If a change-in-ownership statement was timely filed, then the assessor would have been aware of the change in ownership, reassessed the property and processed the appropriate assessment prior to the sale of the property.

Section 600 of the Probate Code states in part:

"Within three months after his appointment, or within such further time as the court or judge for reasonable cause may allow, the executor or administrator must file with the clerk of the court an inventory and appraisement of the estate of the decedent which has come to his possession or knowledge together with a copy of the same which copy shall be transmitted by said clerk to the county assessor." (Emphasis added.)

This clearly lays out the responsibility of the probate clerk to transmit a copy of the inventory and appraisement to the county assessor which should include a listing of all real property interests of the decedent. Also, Section 480(b) of the Revenue and Taxation Code states:

"The administrator or executor shall file a change-in-ownership statement with the county recorder or assessor in each county where the decedent owned real property at the time of death. The statement shall be filed at the time the inventory and appraisement is filed with the court." (Emphasis added.)

It is the responsibility of the administrator or executor to file a change-in-ownership statement "at the time the inventory and appraisement is filed with the court."

Even though it is the responsibility of the executor or administrator and clerk of the court to comply with the law regarding a change in ownership, the assessor is still receiving the bulk of the blame and criticism in this area. In order to relieve some of the pressure, as well as assist the taxpayer, we suggest you review your procedure in this area. In addition, you may wish to contact the probate courts to insure that the clerks are transmitting copies of the inventory and appraisement timely. You may also want to suggest to the probate court that they remind the executor or the administrator of an estate that it is his/her responsibility to file a change-in-ownership statement at the time the inventory and appraisement is filed with the court.

TO COUNTY ASSESSORS

-3-

One county that has been fairly successful in resolving this problem is San Joaquin County. The Local Bar, Superior Court and County Officials coordinated their efforts to add a rule, Section 1003, to the Probate Manual of the Superior Court of San Joaquin County dealing with this issue. Basically, this rule requires that before probate can be closed in San Joaquin County, all real and personal property taxes due on an estate must be paid. A copy of this rule has been enclosed for your review and possible adaptation within your county.

I hope this information proves helpful. If you have any questions, please feel free to contact our Real Property Technical Services Section at (916) 445-4982.

Sincerely,



Verne Walton, Chief
Assessment Standards Division

VW:wpc
Enclosure
AL-16A-0149F

1003. PROPERTY TAX TO BE PAID BEFORE DISTRIBUTION

All real and personal property taxes due on estate assets must be paid prior to final distribution. A Property Tax Clearance Certificate (required to be on file prior to final distribution) will be issued by the San Joaquin County Tax Collector after the Assessor has received all of the following documents:

- A. A copy of the Petition for Probate. (The County Clerk will forward a copy to the Assessor if an extra copy is furnished to the Clerk at the time the original is filed.)
- B. Assessor's Form #294P (Change of Ownership Statement) for each parcel of real property in San Joaquin County in which decedent owned an interest, if such real property will be included in the Inventory of estate assets. Mail directly to the Assessor within 90 days of the date of death, together with stamped self-addressed envelope. (NOTE: for non-probate real property interests, submit Assessor's Form #294NP for each parcel.)
- C. An endorsed copy of each Inventory filed in the estate (give to Clerk at time of filing the original, and the Clerk will forward to the Assessor). Receipt by the Assessor of an endorsed copy of any Inventory marked "Final" will act as an automatic request for issuance of the Property Tax Clearance Certificate.

If it is likely that a final Inventory will not be on file within 90 days of the date of death, mail directly to the Assessor within that period a copy of the Inventory that the personal representative plans to file (appraised values are not necessary), and thereafter furnish the Assessor with endorsed copies of the Inventories actually filed.

A supply of each can be picked up without charge at the offices of the County Assessor and County Clerk. Reasonable quantities can also be obtained by mail from the County Assessor at 24 S. Hunter St., Stockton, CA 95202, provided the request is accompanied by a self-addressed envelope large enough to hold sets of 8-1/2" x 11" forms.